



DEPARTMENT OF THE ARMY

U.S. Army Corps of Engineers
WASHINGTON, D.C. 20314-1000

REPLY TO
ATTENTION OF:

CERE-MC

5 February 1997

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Exchanges of Lands at Civil Works River and Harbor or Flood Conflict Projects

1. Authority for exchanges of civil works lands is codified at 33 U.S.C. §§558b and 558b-1. Section 558b states, in part:

In any case in which it may be necessary or advisable in the execution of an authorized work of river and harbor improvement to exchange land or other property of the government for private lands or property required for such project, the Secretary of the Army may, upon the recommendation of the Chief of Engineers, authorize such exchange upon terms and conditions deemed appropriate by him, and any conveyance of Government land or interests therein necessary to effect such exchange may be executed by the Secretary of the Army.

33 U.S.C. 558b. Section 558b-1 makes this authority applicable to authorized works of flood control.

2. Engineer Regulation 405-1-12, Chapter 11, paragraph 11-106, briefly restates this authority, but does not further explain or clarify it.

3. Our traditional interpretation of this exchange authority, as documented in our historical files, has required that the non-federal lands to be acquired in the exchange be necessary for project purposes, i.e., the lands be required in order to operate the project. We have also, in the past, carried this interpretation even further by rejecting self-justifying exchanges, that is, exchanges where the need for acquisition of non-federal lands is justified only by the disposal of the federal lands to be given up in the exchange. In other words, all exchanges were driven by a need to acquire the non-federal lands, thus, virtually all exchanges proposed by non-federal entities were rejected.

E-MC
SUBJECT: Exchanges of Lands at Civil Works River and Harbor or
Flood Conflict Projects

4. On the basis of a recent reinterpretation of the exchange authority by the Army General Counsel, our traditional policy is no longer valid.
5. Exchanges of civil works lands are authorized when the exchange is deemed necessary or advisable. An exchange is deemed necessary when the lands to be gained are indispensable to the project, i.e., the project could not achieve its intended purposes without them. An exchange is advisable when it is proper, expedient or prudent, and when the government will gain an overall net benefit, either from the value of the land to be gained or from other aspects of the exchange (e.g., decreased operation and maintenance costs). Furthermore, a broad array of interests, such as non-possessionary rights or unextinguished claims may be considered to be "lands" for the purposes of an exchange.
6. As always, if you have questions regarding authority, or lack thereof, for a particular proposed exchange of lands, you may make an informal query to CERE-MC for a predetermination of authority prior to formal submission of an exchange.
7. The attached policy guidance supersedes ER 405-1-12, paragraphs 11-106 & 11-108.

FOR THE COMMANDER:

Encl
as

B. J. FRANKEL
Director of Real Estate